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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA
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9 United States of America,) CR 04-1159-PHX-MHM
10 Plaintiff,) CV 05-1097-PHX-MHM
11 vs.) **ORDER**
12 Enrique Luna Herrera,)
13 Defendant.)
14 _____)
15

16 Plaintiff has filed a pro se Motion to Vacate, Set Aside, or Correct Sentence By a
17 Person in Federal Custody pursuant to 28 U.S.C. § 2255 (Dkt. #31). The matter was referred
18 to United States Magistrate Judge Bernardo P. Velasco who has issued a Report and
19 Recommendation that recommends that the Court enter an Order dismissing Plaintiff's
20 Motion (Dkt. #43). Plaintiff has not filed written objections to the Report and
21 Recommendation.
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23 **STANDARD OF REVIEW**
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25 The Court must review the legal analysis in the Report and Recommendation de novo.
26 See 28 U.S.C. § 636(b)(1)(C). The Court must review the factual analysis in the Report and
27 Recommendation de novo for those facts to which objections are filed. "Failure to object to
28 a magistrate judge's recommendation waives all objections to the judge's findings of fact."
Jones v. Wood, 207 F.3d 557, 562 n.2 (9th Cir. 2000).

DISCUSSION

Plaintiff asserts that he was denied effective assistance of counsel because he was sentenced to more time than should have received. The Magistrate Judge has recommended that the Motion be denied because Plaintiff has not met the standard required under Strickland v. Washington, 466 U.S. 668 (1984) to show ineffective assistance of counsel.

The Strickland test requires Plaintiff to show a deficient performance by his counsel and that prejudice resulted from that deficient performance. To show prejudice, Plaintiff would need to demonstrate a reasonable probability that but for his counsel's deficient performance, the outcome of the proceedings would have been different. Strickland, 466 U.S. at 694. As the Magistrate Judge discussed in the Report and Recommendation, Plaintiff has not met this test because Plaintiff failed to demonstrate either the first or the second prong of the Strickland test.

Accordingly,

IT IS ORDERED adopting the Magistrate Judge's Report and Recommendation (Dkt. #43) in its entirety.

IT IS FURTHER ORDERED that Plaintiff's Motion to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody (Dkt. #31) is denied.

DATED this 9th day of January, 2007.

Mary H. Murguia
United States District Judge